

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

BARBARA JEANNE ALTEMEIER,
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PLAINTIFF,
§
v.
§
DALLAS COUNTY, TEXAS (1); et al.,
§
DEFENDANTS.

No. 3:10-CV-02646-N (BK)

**PLAINTIFF'S RESPONSE TO DEFENDANTS, COUNTY OF MUSKEGON, TONY
TAGUE AND DALE HILSON'S MOTION TO STRIKE PLAINTIFF'S FIRST
SUPPLEMENTAL OBJECTIONS TO FINDINGS, CONCLUSIONS AND
RECOMMENDATION OF MAGISTRATE JUDGE:**

NOW COMES Barbara Jeanne Altemeier, Plaintiff, to file this Plaintiff's Response to Defendants, County of Muskegon, Tony Tague and Dale Hilson's Motion to Strike Plaintiff's First Supplemental Objections to Findings, Conclusions and Recommendation of Magistrate Judge and would show the Court the following to wit:

I. NOTICE OF PLEADING ERRORS BY MICHIGAN DEFENDANTS:

Plaintiff objects to the mis-spelling of her name by Michigan Defendants Muskegon County, Michigan (3), Tony Tague (6), Dale J. Hilson (7), James Schultz (5), and Fruitport Township, Michigan (4) as “Barbara Jean Altemeier”, which is NOT Plaintiff’s name.

Plaintiff has ONE and ONLY ONE name and no other, and that name is Barbara Jeanne Altemeier, the name under which the above styled suit was filed. Barbara Jeanne is Plaintiff's first name, and Altemeier is Plaintiff's last name.

Also, Michigan Defendants James Muskegon County, Michigan (3), Tony Tague (6) and Dale J. Hilson (7) stated (Docket Item 96 page "1" item "2"), to which Plaintiff Objects and

Disputes:

"That all Defendants filed Motions for Summary Judgment and those issues were fully briefed by all parties and extensively by the Plaintiff."

This statement is false: No Motions for Summary Judgment were filed by any Defendant. All Defendants filed Fed. R. Civ. Proc. 12(b)(6) Motions for "failure to state a claim upon which relief can be granted" (see Docket Items 9, 10, 11, 12, 26, 43 and 54), and one Defendant filed a Fed. R. Civ. Proc. 12(c) "Motion for Judgment on the Pleadings" (see Docket Item 54). No Defendant has filed a Fed. R. Civ. Proc. Rule 56 "Motion for Summary Judgment" to date.

II. PLAINTIFF'S RESPONSE TO MOTION TO STRIKE:

1. Magistrate's Findings, Conclusions and Recommendation were filed in the above styled suit as Docket Item 87 on Thursday, March 31, 2011.
2. Clerk filed "Notice of Delivery" on Friday, April 1, 2011. Document was sent by U.S. Postal Service first class mail and was postmarked that date.
3. Document was sent by first class mail from the U.S. District Court for the Northern District of Texas Dallas, Texas to Garden Grove, California, and was delivered on Thursday, April 7. Documents sent late in the week from the U.S. District Court for the Northern District of Texas to Garden Grove, California are received near the end of the following week. The Clerk of the Court is aware of postal problems.
4. Document states "Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy."

5. The phrase "after being served with a copy" is not defined in the Document, so Plaintiff thought she had 14 days after she received it and she mailed the response within that time. She received it on April 7 and sent the reply on April 18 by U.S. Postal Service overnight Express Mail, so she thought she was within the correct time period as it was received by the Court on April 19.

6. Court docketed First Supplemental Plaintiff's Objections to Findings, Conclusions and Recommendation of Magistrate Judge on Tuesday April 19, 2011.

7. Plaintiff requests the Court to deem the filing of First Supplemental Plaintiff's Objections to Findings, Conclusions and Recommendation of Magistrate Judge to be timely.

8. Plaintiff requests in the alternative that the Court extend the time for Plaintiff to file First Supplemental Plaintiff's Objections to Findings, Conclusions and Recommendation of Magistrate Judge.

14. Plaintiff notes as a collateral defense that Muskegon County, Michigan (3), Tony Tague (6), and Dale J. Hilson (7) first appeared before this court by way of attorney Ronald G. Acho to file "Defendants, County of Muskegon, Tony Tague and Dale Hilson's Motion to Dismiss Under F.R.C.P. 12(b) and Brief in Support" (Docket Item 43) on January 27, 2011, twenty (20) days late after the twenty-one (21) days allowed for their answer or response under Fed. R. Civ. P. 12(a).

15. Note that the Supreme Court has directed that pro-se parties not be held to the same standard in pleading as a lawyer and/or attorney, see Platsky v. CIA, 953 F. 2d 26 (1991):

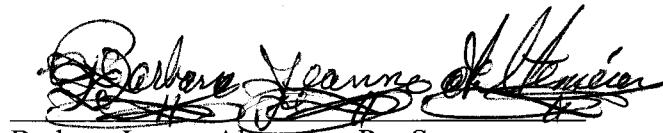
"Pro se plaintiffs are often unfamiliar with the formalities of pleading requirements.

Recognizing this, the Supreme Court has instructed the district courts to construe pro se complaints liberally and to apply a more flexible standard in determining the sufficiency of a pro se complaint than they would in reviewing a pleading submitted by counsel. See e.g., Hughes v. Rowe, 449 U.S. 5, 9-10, 101 S.Ct. 173, 175-76, 66 L.Ed.2d 163 (1980) (per curiam); Haines v. Kerner, 404 U.S. 519, 520-21, 92 S.Ct. 594, 595-96, 30 L.Ed.2d 652 (1972) (per curiam); see also Elliott v. Bronson, 872 F.2d 20, 21 (2d Cir.1989) (per curiam). In order to justify the dismissal of a pro se complaint, it must be "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Haines v. Kerner, 404 U.S. at 521, 92 S.Ct. at 594 (quoting Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957)).

III. PLEA

THEREFORE, IT IS Prayed that Defendants, County of Muskegon, Tony Tague and Dale Hilson's Motion to Strike Plaintiff's First Supplemental Objections to Findings, Conclusions and Recommendation of Magistrate Judge be denied and that First Supplemental Plaintiff's Objections to Findings, Conclusions and Recommendation of Magistrate Judge be accepted as timely or in the alternative that the Court extend time to file.

Respectively submitted,

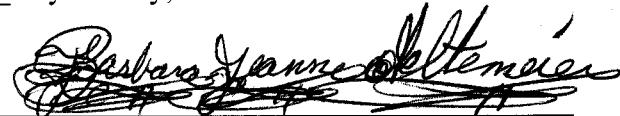


Barbara Jeanne Altemeier, Pro Se
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VERIFICATION

IT IS HEREBY Verified that under the penalties of perjury that the foregoing Plaintiff's Response to Defendants, County of Muskegon, Tony Tague and Dale Hilson's Motion to Strike Plaintiff's First Supplemental Objections to Findings, Conclusions and Recommendation of Magistrate Judge is true and correct to the best of my knowledge and belief.

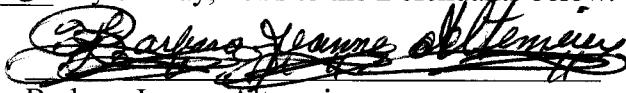
Witness my hand and seal this 10 day of May, 2011.



Barbara Jeanne Altemeier

CERTIFICATE OF SERVICE

IT IS HEREBY Certified that a copy of the aforementioned Plaintiff's Response to Defendants, County of Muskegon, Tony Tague and Dale Hilson's Motion to Strike Plaintiff's First Supplemental Objections to Findings, Conclusions and Recommendation of Magistrate Judge was sent by First Class Mail on the 10 day of May, 2011 to the Defendants below.



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